DAMAGES S.A.

ASSESSING PERSONAL INJURIES DAMAGES
IN SOUTH AUSTRALIA

UPDATE TO JULY 2011
but service is up-to-date

David Kidd (LLB(Hons) GDLP)
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ACKNOWLEDGEMENTS

Many thanks to barristers Michael Kernot and Terry McRae for encouraging me to produce this work and for their valuable suggestions, contributing to its practical usefulness.

I also thank my assistants Patricia Lee and Mark Nemstas for their assistance in the preparation of the Hardcover Loose Leaf and Web versions.

The author acknowledges the valuable works listed below which he has consulted:

- S A District Court Judgments Index
- Australian Torts Reporter’s (ATR) Comparative Verdicts: Personal Injury and Death Charts

PREFACE

As a legal practitioner who has, for over 10 years, specialized in legal research for South Australian barristers and solicitors, I have found demand for research in the area of personal injuries damages awards to be comparatively high. Hence the need for this service.

The need for an appreciation of comparable awards is well recognized. Cox J, for example, in Packer v Cameron (1989) 54 SASR 246 @ 250-251 stated:

“In the end the foundation for any particular assessment is that it is reasonably proportionate to the damages that have been awarded in other cases that are more or less comparable with the plaintiff’s, although the overall standard may be subject to periodic revisions to accord with the courts’ appreciation of the general level of damages awards that the community, as represented by the insured motorists, can fairly be expected to accept. We were referred to the oft-quoted judicial statements that eschew tariffs and emphasise the need to fasten on the situation of the particular claimant and not the situation of other claimants in other actions … However, no-one has suggested that damages can sensibly be assessed by some kind of innate impulse … That is why any new judge whose practice has not given him an insight into the notions of fairness and moderation that find their expression in damages awards in personal injury claims will acquire it as quickly as he can by rapidly scanning a sufficient number of published or digested awards …”

This work will indeed greatly facilitate this ‘rapid scanning’ process.

Not only that, the practitioner will notice some innovations in this publication not seen in other like publications. Note for example the:

1. Occupation/Injury cross-referencer;
2. Multiple injuries cross-referencer;
3. Listing of cases not only alphabetically by injury but also numerically by scale number;
4. Wrongs Act & Civil Liability Act annotations; and
5. Issues section, which provides many useful quotable quotes and case lists on a multitude of issues.
6. Criminal Injuries/Victims of Crime Compensation Scale, cases and commentary included.

I hope, used in conjunction with Luntz’s most scholarly book, this loose-leaf service will provide the legal practitioner the complete package in terms of legal research in this area.

David Kidd (LLB(Hons), GDLP)
USERS’ GUIDE

*** Please check for appeals re latest cases as your service may be 3 or more months behind depending on how often you have it updated.

NOTE: Where a quote in a précis contains bold emphasis it was highlighted by the author for your assistance.

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   ▪ All ages combined
   NOTE : All award figures are pre-apportionment i.e. no deductions for contributory negligence are made.

3. Wrongs/Civil Liability Act Scale and Victims of Crime Act
   Case summaries are ordered numerically in this division according to the number given on the 0-60 scale, or 0-50 scale.

4. Issues
   Quotable judicial quotes on a plethora of damages related issues are alphabetically recorded here according to issues. Some useful case summaries and precedent lists also included.
   See the start of division for more detailed table of contents.

5. Liability and Apportionment

6. Defamation (damages for)

COVERAGE

District Court / Supreme Court S.A.
   1994 … most damages cases re personal injury/death included.
   Pre 1993 selected few only.
   2001 … criminal Injury compensation cases

Various interstate and High court cases also included.
MULTIPLE INJURIES CROSS-REFERENCER

This will assist practitioners interested in finding awards where there are similar multiple injuries.

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OCCUPATIONSTATUS CROSSREFERENCER

This will assist practitioners interested in awards for persons sharing the same occupations or status (e.g. unemployed or pensioner).

NOTE: Sample of headings only.

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INJURIES SECTION

Ankle

Mild

Ivanoff v Holyoak 9/8/96 S5748 Full Court – P(m) hospitality trainee/worker injured MVA January 1990 when 14 (19 at trial). Fractured neck of right humerus and fractured lateral malleolus of the right ankle. Suffered pain in the 4 year period from accident to trial. In assessing NEL learned magistrate stated as to the P’s injuries “An actual broken arm and significant but relatively minor break to the ankle with ongoing incidence of pain with an overlay of depression is clearly worth more than the typical muscular ligamentous injuries that we commonly deal with. This is a real provable injury with acute pain initially, plaster for six weeks and a sling and ongoing problems. I assess it as a 10″ @ 5. Permanent disability to arm estimated at 5-10% and ankle at 5%. NEL $12,400; PEL $10,000; FEL $30,000; BvF $250; Total $52,650

Jarldorn v Shaw 21/4/99 [1999] SADC 52 Lowrie J (appeal dismissed 1999 SASC 529) – P(m) casual barman/laboratory worker seriously injured MVA January 1994 when approx 24 (29 at trial). Broke the talus bone in his ankle. This successfully repaired but he has a permanent disability and will experience ongoing pain. Also suffered facial injuries and required many operations including major cranial surgery and nasal surgery. “He has suffered a permanent loss of [a] portion of his sense of smell [15-20%]. The significant and permanent injury is the change in his personality” @ 32. Suffered a mild degree of brain damage causing him to be erratic, argumentative, short-tempered, angry, depressed and violent. He is also conscious of scarring on his scalp made clearer by his shaven head. P did not have much of an employment record, but had worked as a casual barman and in a lab doing mini-lab duties and was proposing to do further study in graphic Art. Judge did not see this translating in to income for him but in assessing PEL commented the dramatic changes to his personality had made him almost unemployable. He cannot do heavy work either because of the ankle. NEL $25,740; PEL $35,000; FEL $150,000; future medicals $5,000; grat serv $1,000; int. $2,000; Total $218,740

Medium

Sweet & Schwerdt v Schwerdt 22/12/94 S4881 Full Court (appeal dismissed from D2941 Brebner CJ) – R(m) shearer injured in MVA when 15 in March 1987 (approx 22 at trial). Injured sub-talar joint which developed arthritis and was deteriorating. Probably would have become a contract shearer being able to earn $40,000-$45,000 gross p.a. but for injury. Had managed post-injury to earn $10-12,000 gross p.a. working as roustabout and shearer. NEL $25,000; FEL $85,000; Total $118,000

Flecknoe v Yendall 27/11/97 D3721 Anderson J – P(m) with sporadic unskilled work history injured bicycle accident November 1993 when approx 27 (31 at trial). Fractured the malleolus of right ankle and suffered a 5-10% loss of capacity of his right leg. Also developed intermittent non-radiating lower back pain. P was always diligent in searching for work but had some periods of unemployment. NEL $13,900; PEL $35,996.97; FEL $70,000; grat serv $1,000; future medicals $2,650; specials $6,568.48; int. $4,100; Total $134,215.45

Non-SA cases

Guides Australia Inc v McMartin 16/2/06 [2006] NSWCA 20 Full Court. “[T]he [R] suffered in the fall a major lateral ligament tear of the right ankle which, over time, required surgery on two occasions and has left her with significant impairments in respect of her family, social and working life. The injury, its treatment and consequences ... has involved considerable pain and distress and continues to do so. ... [T]he use of crutches necessitated by the injury and the
operative treatment thereafter, occasioned an injury to the [R's] right shoulder which further incapacitated her and caused continuing pain, impairment and distress and required treatment by, amongst other things, anaesthetic nerve blocks in the shoulder and neck" [135-136]. Ligamentous damage was the most significant of P's injuries. P's NEL found to be 31% of the most extreme case.

Bon Appetit Family Restaurant Pty Ltd v Mongey 11/2/09 [2009] NSWCA 14 Basten JA, Full Court. "26 By reference to Owners - Strata Plan 156 v Gray [2004] NSWCA 304, the appellant noted that an assessment of 33% of a most extreme case, with respect to an injury limited to the plaintiff's left ankle, 'was so unreasonable and plainly unjust that it must be inferred that in some way his Honour failed properly to exercise the discretion reposed in him in making the determination he did': at [41] (Sheller JA, Gzell J agreeing). Such a case may undoubtedly arise: but in the present case, where the defendant accepted at trial a figure of 24% or 25%, the argument cannot run."

Vasilikopoulos v NSW Dept. of Housing 5/6/09 [2009] NSWDC 114 Hungerford ADCJ. P retiree fell and fractured her left fibula above her ankle joint. P "does have a disabling condition from the ... fall which is chronic but stabilised; her subsequent weight gain clearly would not assist weight bearing on the left ankle and she continues to use a walking stick. ... Only a relatively small amount of domestic assistance was required ... The injury itself was of a minor fracture which was successfully treated but with ongoing disabilities in the left ankle affecting her mobility and day-to-day domestic activity. Her condition does not require further treatment, other than perhaps some physiotherapy to the ankle and Panadol for pain, although the complaints of pain and numbness will persist for at least two years from the date of the fall into the foreseeable future" @ 46-48. P assessed at 22% of a most extreme case, but D not liable.

Schmidt v Woolworths Qld Pty Ltd & Anor 8/5/09 [2009] QSC 106 Dutney J assessed damages in the case of a man who was 25 y.o. (31 at trial) who suffered compound fractures to and dislocation of his ankle when his ankle was crushed against a wall at work whilst using a pallet mover. P had open reduction and internal fixation procedures and he underwent a painful and prolonged recovery. Skin grafts had to be taken from his thigh. P, who previously was fit for heavy manual work, is now really only physically suited to light manual work or sedentary duties. He has little in the way of skills for sedentary work for his limited education. General damages, amongst other heads, assessed at common law at $65,000.

In Davies v George Thomas Hotels P/L 21/4/10 [2010] NSWDC 55 Murrell SC DCJ assessed P's ankle injury at 30% of a most extreme case. He suffered a serious trimalleolar fracture in a fall and was on crutches for five months. He has had two operations. The ankle has been infected and is sensitive to knocks. There is scarring. P's employment, domestic and social life has been significantly affected and he can't stand or walk for ten minutes without it aching. It is unlikely to improve. P has become depressed. He has a life expectancy of 30 years. Other heads also assessed and a total award made of $317,354.

In Hamilton v Duncan 26/5/10 [2010] NSWDC 90 Murrell SC DCJ assessed the consequences of P's ankle and knee injuries from tripping at 30% of a most extreme case. The "plaintiff underwent left knee arthroscopic partial lateral meniscectomy and medial femoral chondroplasty ... the disabilities associated with the accident caused depression and disappointment. This psychological state was the result of pain, limited capacity to undertake domestic responsibilities, and inability to work and financially support his family. He referred to diminished interest in sexual relations and arguments with his wife because he was unable to undertake household chores and assist with the care of the couple's seriously disabled daughter ... the plaintiff continues to suffer from some pain and instability in the ankle"@35-38. P was 45 y.o. in 2006 when the incident occurred.

In Wakeling v Coles Group Ltd 4/4/11 [2011] NSWDC 20 the P "sustained a twisting and swelling injury to his right ankle, followed by a blow to the medial aspect of the ankle as he fell [in a supermarket]. He also suffered some minor bruising type injury to his right knee, wrist, elbow and shoulder. He also suffered a low back injury, which did not become symptomatic for him until several days after the fall. ... [He has] a broad based L5/S1 annular disc bulge with some similar findings at the level L4/L5" @47. P has been "left with persistent pain in his right knee and ankle, including the experience of sharp pain, which he described as being mild, occurring 2 to 3 times a week. His low back problems remain
intermittently troublesome for him, depending for severity on his level of activity, and he has difficulty laying on his back when sleeping. He experiences difficulty getting out of bed in the mornings due to back pain”. He has gained significant weight and has difficulty walking, which was a favourite activity of his. He experiences chronic pain in his right lower leg, an inability to ‘tinker’ with wrecked cars to salvage saleable parts (a hobby of his) and anger and stress which he says has caused him to start smoking again. It’s unlikely that P will ever be asymptomatic. P was 22 when injured and 23 at judgment. Levy SC DCJ awarded P $90,000 for NEL, among other heads.

Severe

Boyce v Marley & Atkinson 23/2/94 D3013 Lowrie J – P(m) real estate agent injured MVA Dec. 89 when 34 (38 at trial). Severe fracture of right tibia requiring internal metallic fixation of ankle. Ongoing back, neck and foot pain and severe headaches. Will be degenerative changes in ankle probably requiring future fusion of joint. Large prolapse in neck impinging on nerve root led to fusion of neck joint being done. By mid-92 neck condition stabilized. Depression. Changed from happy person to irritable and miserable one. Working very successfully for 1-2 years before MVA as real estate agent on commission. Tried to return to this, but could not cope because of effect of long hours on ankle and back. Also a qualified boiler maker/welder, but not able to do such manual or labouring work anymore. Can cope with real estate work, but cannot put in generally expected long hours. Scale 22

NEL $25,300; PEL $122,355.31; FEL $80,000; specials (past) $16,461.16 (future) $5,000; Total $249,116.47

Dopson v Moharich 4/4/95 D3239 Taylor J – P(f) checkout operator/receptionist injured MVA September 1991 when 16 (approx 19 at trial). P fractured medial malleolus of right ankle leaving 30% lower limb function impairment with scarring. Also suffered 30% crush fracture L2 vertebra and minor crush L1 vertebra leaving residual impairment of lumbar spine 40%. Percentages were higher than those given by another specialist. It was not clear which specialist judge accepted. Was clear though that P was struggling to do work as a checkout operator due to injuries and had lost capacity to do work such as packing shelves, storeroom work and delivery driver. P able to work as receptionist which she now does but it may reduce her chances of doing hairdressing which she wants to do. Scale 25

NEL $32,750; FEL $40,000; future medicals $3,000; BvF $500; specials $962.70; Total $77,212.70

Davis & Davis v Scott & Ors 26/6/98 S6745 Full Court (successful appeal from D3689 Bright J) – P(m) plumber seriously injured in plane crash 1990 when 11 (18 at trial). Injuries in accident included “closed head injury, chip fracture left supra and orbital ridge (medial), left peri-orbital lacerations including full thickness laceration to the upper eyelid, abdominal injuries, fracture right mid shaft humerus, fractured left ankle (growth plate injury) [and] L3-4 chance fracture” @ 21. “At … trial, his principal permanent injuries were the lumbar injury which the judge assessed at 25% loss of the whole body and a 10% disability … to the left ankle … [the trial judge] … appears to have overlooked (a revised assessment of) … permanent injury to the lumbar spine at 35% and the left ankle at 15%. At trial P was working in the family business as a plumber, but had difficulty with heavy work, and if he ever had to find work on the open labour market he would need a sympathetic employer. Re nervous shock claim his mother saw plane go down and suffered a panic disorder and PTSD. By late 1996 she had improved but would probably suffer anxiety symptoms on an intermittent basis in future. Father suffered an adjustment disorder with anxious mood which settled down after many weeks. Scale 22

NEL $60,000; FEL $100,000; specials $46,609.80; travel $500; grat serv $3,640; Total $210,749.80 plus int. $1,546 Nervous Shock Damages Mrs Scott $10,000; Mr Scott $6,500

Kemp & Kemp v District Council of Yankalilla 10/4/00 [2000] SADC 45 David J – 1st P(m) forklift driver/fruit picker fell from jetty February 1995 when 26 (approx 31 at trial). As result of accident suffered approximately 60% loss of function of the right ankle and 40-50% loss of function of the left ankle. P could not walk without assistance for 2 years. P will not be able to
do any occupation requiring standing for prolonged periods or a great deal of walking, running or climbing, and will not be able to do the forklift driving or fruit picking work he had previously done intermittently. P had a sporadic work history.

NEL $60,000; PEL $45,000; FEL $250,000; specials $7,363.10; loss of super $20,000; grat serv $7,000; future medicals $15,000; Total $404,363.10

Newton v Hill 28/4/00 [2000] SADC 53 Bishop J – P(f) injured MVA November 1994 when 17 (approx 23 at trial). P fractured right ankle and tore anterior cruciate ligament in left knee which was reconstructed. “The plaintiff’s loss of earning capacity is represented by the significant percentage permanent loss of function of her right leg below the knee (about 30%) and her left leg at or above the knee (about 20%), taking into consideration the possibility of premature degenerative arthritic changes” @ 30. P had not commenced her working life and was unskilled but nevertheless presented as being an intelligent and alert young person. P has “been deprived of the opportunity to obtain employment as a physically fit woman throughout practically the whole of her working life” @ 30. P may only find sedentary work now.

NEL $35,750; PEL (inc int.) $60,000; FEL (inc medical and other treatment) $80,000; grat serv $2,000; Total $177,750

Lucas v MAC 6/7/00 [2000] SADC 85 Hume J – P(f) unemployed office manager/accountant injured MVA July 1996 when 37 (approx 41 at trial). “She suffered a fracture dislocation of the right talus in her ankle” @ 8. In future (about 10 years) she will require a fusion of ankle as pain will become intolerable. Mobility as a result will be restricted in employment and day to day living. P also has unattractive scarring on ankle. P homemaker sacrificed her income to raise children, but is resourceful and probably will work in office management / accounting when children mature. Capacity to obtain and perform such work has been diminished.

NEL $22,800; PEL $2,500; FEL $85,000; specials $10,023.74; BvF $2,500; future medicals $10,000; Total $132,823.74

Duggan v EVCI & Watts 2/8/00 [2000] SADC 94 Robertson J – P(f) contract relief school teacher injured MVA October 1995 when 34 (approx 39 at trial). Major injury was to ankle, which included “damage to the calcaneo-cuboid joint of the right ankle, an injury to the lateral ligaments … and scar tissue…” Also suffered associated knee and back pain from time to time. Ankle injury is permanent and symptoms will worsen due to arthritis. Right knee problems will persist. Also fractured her sternum. P now only has the capacity to work 3 days p/week. Can no longer work 5 days p/week in any job in which she cannot sit as much as she needs to. Social dancing, which she enjoyed regularly is out.

NEL $26,100; PEL $56,000; FEL $150,000; future medicals $1,500; grat serv $3,500; specials $2,469.35; Total $239,559.35

Tattoli v Ali 19/12/00 [2000] SADC 143 Lunn J – P(m) termite technician injured ankle 1995 when riding in cart pulled by horse when 32 (approx 37 at trial). P left with a ‘significant permanent residual disability in his left ankle’, but damages were only relevant to his medical practitioner’s breach of duty which caused him a loss of chance to have an internal fixation of his ankle joint. Medical opinion was accepted that even if such an operation was successful 20% of patients would still have suffered osteoarthritis. Further there were other contributing problems in the left foot which would not have been influenced by such a procedure.

PNEL $10,000, FNEL $20,000; PEL $8,000; FEL $15,000; specials $1,500; future grat serv $100; pre-judgment int. $2,500; Total $57,100

Zacharia v The Nominal Defendant 18/8/03 [2003] SADC 120 Bright J – P(m) printer injured in motor cycle accident September 1999 when 31. Suffered 5% loss of full and efficient use of right lower limb below knee due to right great toe fractures, 5% loss of full and efficient use of left lower limb below knee due to left ankle joint injury, 10% whole body permanent physical impairment and loss of physical function representing his pelvic ring disruption and 5% whole body impairment and loss of physical function due to lumbar spine fractures. P “will have gradually increasing pain in his back and ankle … will not be able to stand for long periods… will not sit for long without getting up to move around …will not cope with jobs
involving significant lifting, bending or twisting ... will not return to his trade ... will not play competitive cricket, football or golf" @ 18. P is less outgoing and will have to be careful to avoid depression. A 50% chance he will need a lumbar fusion in 20 years currently valued at $20,000. He has a net weekly loss of $744.45. 

NEL $54,600; PEL $132,711.25; FEL $300,000; past specials (unpaid) $12,412.55; future specials $4,000; past loss super cont $17,350.97, future loss super cont $35,144; grat serv $20,000 Total $576,218.77

Evans v Reeve 19/5/08 [2008] SADC 63 Soulio J – P (m), cellar hand, winery laboratory worker & business operator, injured his ankle when jumping from a trailer in May 1997 when 32 y.o. (41 at trial). “The injury was a painful one which required [P] to be hospitalised for eight days initially. Following discharge … [P] was restricted in his ability to carry out his employment duties which was a source of frustration to him, and restricted in his ability to carry out recreational activities. In early February 2000 he underwent a further surgical procedure when the plates and screws were removed. In February 2004 he underwent a fusion of the right ankle and again required a period of recuperation of several weeks before he was able to resume physical activities. The right leg in the region of the ankle has the appearance of being swollen, and is scarred and discoloured. There are two scars about 10cm and 6cm in length on the inside of the ankle, and a long scar about 20cm in length on the outer side. The [P] contracted an infection after the plates were initially removed and that has resulted in the area of discoloration over the ankle. Whilst the outcome of the fusion has been relatively successful, he is left with a significant disability of the right leg below the knee and the condition will, if anything, deteriorate (possibly requiring a further fusion)” @73 (my emphasis). Assessment of economic loss complicated due to P’s various pursuits. P also took up fork-lift driving which generated a sound income for him.

NEL $27,900; PLOEC $100,000; FLOEC $125,000; grat. serv. $2,500; future assistance $5,000; WvM nil; medical $2,706.90; future medicals $1,000; Interest $25,750. Total $289,856.90

Non-SA cases

In Kay v Murray Irrigation Limited 11/12/09 [2009] NSWSC 1411 P (farmer), in a fall in September 2004, suffered “complex fractures of the left ankle, including a fracture of the medial malleolus, comminution and compression of the surface of the tibia and displacement of the lateral malleolus … Three days later he underwent surgery to fix the fractures and to realign the ankle joint. He was discharged after one week with his leg and foot in plaster. He was effectively bed ridden for eight weeks, unable to weight bear on his left ankle because of the complete disruption of the structure of the ankle joint … Eight weeks after the initial surgery part of the internal structure fixing the fractures was removed after which his ankle was permanently fixed with two screws on the medial malleolus and a plate on the fibula. He was required to wear a protective boot and to utilise crutches for eight weeks after this procedure. He was able to weight bear on his ankle by increments and was free of all walking aids by January 2005. He has the permanent need for orthopaedic footwear as he is unable to walk with his heel on the ground, and even with orthopaedic footwear, to the extent that he needs to weight bear on his left leg, he walks on the ball of his foot. From March or April 2005 he resumed some farm work. He purchased a motorised mustering device which he could drive without using his left ankle at all and endeavoured, albeit with only moderate success, to modify the tractor to avoid using his left ankle … [P’s disabilities include] Difficulty in bending the left foot … Needing to walk on the outside of the left foot with his left leg externally rotated … Difficulty in walking any lengthy distance, particularly on uneven ground … Difficulty in standing for any lengthy period of time … Intolerance to walking with bare feet …The deformity and persistent ankle swelling has led to a difference in feet size meaning that the plaintiff has to purchase boots and shoes in a size suitable for the larger size and then pad the boot or shoe for the smaller size … Permanent limp when walking … Difficulty in carrying out many household activities … Difficulty in driving motor vehicles for lengthy periods of time …Constant need to take Panadol and other pain relief medications … [and] Depression and loss of confidence” @26-28. Fullerton J assessed P at 35% of a most extreme case.

Britten v CPT Manager Ltd 23/9/09 [2009] QSC 306 a 33 y.o. P slipped at a shopping centre injuring her ankle. McMeekin J assessed an ISV value of 20 for the severe complex fracture of
her right ankle which amounted to $26,000 in general damages. P lost her capacity to work as a child care worker and received $295,000 for future economic loss amongst other heads.

In Kaiser v Johnston 11/6/10 [2010] NSWDC 103 P, a 65 y.o (68 at judgment), was hit by a car while walking. He suffered a "severe traumatic brain injury resulting in impairment to his cognitive functioning and negative emotional and behavioural consequences [and] ... compound fracture of the left ankle with ongoing pain and discomfort and restriction in range of movement" @128. Sidis DCJ awarded, amongst other heads, $200,000 in general damages.

In Craddock v Anglo Coal (Moranbah North Management) P/L 30/4/10 [2010] QSC 133 P, when he was a 43 y.o. miner in August 2005, suffered at work osteochondral injuries in three locations within his left ankle. This resulted in progressive arthritic change. P had two operations, but returned to his mining work where he experiences pain, the ankle occasionally locks and is easily injured. "He suffers pain with simple daily tasks such as mowing the lawn or moving his wheelie bin. Carrying anything of significant weight is now a problem for him. ... Since June 2009 he has ceased taking panadeine forte but has taken panadeine at the rate of about a packet of 24 tablets a week. The painkiller taken can vary. ... Mr Craddock was a strongly built man who has maintained his fitness throughout his life. He obviously took great pride in his physical strength and fitness and working ability. ... His capacity to carry out his mining work has been significantly impaired" @15-16. P likely to need another ankle operation. McMeekin J assessed general damages of $60,000, among other heads.

In Kitson v Skilled Group Ltd & Ors 5/11/10 [2010] QSC 414 Cullinane J awarded the P $50,000 in general damages among other heads for his injured ankle. P was 41 y.o. when he injured his ankle at work. P sustained "a partial tear of the lateral ligament of the left ankle which healed with scarring, local pain and tenderness, synovitis at the antero lateral aspect of the left ankle, with impingement symptoms and a compression injury on the medial side of the left ankle with probable osteochondrial damage" @62. As a result, P has a 9% impairment of the whole person. He has significant restriction of movement in his left ankle. P will suffer ongoing symptoms and disabilities and the ankle could deteriorate in the long term.
**SCALE - CASES ORGANISED ACCORDING TO SCALE VALUE**

### Scale 1

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<thead>
<tr>
<th>Case</th>
<th>Scale</th>
<th>Description</th>
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<tbody>
<tr>
<td><strong>Evans v Grund; Evans v Jaeschke</strong> 24/6/97 D3637 Brebner CJ – P(m) diesel mechanic/car appraiser injured in 2 MVAs in Jan 92 and Feb 93. 31 at trial. In 1992 MVA suffered minor neck injury from which P recovered after a few weeks. In 1993 MVA also injured neck but more severely. Has had much pain &amp; headaches &amp; eventually had fusion operation on 6th &amp; 7th cervical vertebrae. Will suffer significant level of discomfort permanently. Also had an emotional response to injuries, which prevented him doing light work, which he was capable of doing. Can no longer work as mechanic. Also has difficulty driving for more than 30 mins at a time and has lost about 50% of capacity to find and keep work in his fields of expertise. <strong>Scale 1992 MVA 1 – 1993 MVA 25</strong></td>
<td>1</td>
<td>NEL $1,370; specials $75.90 Total $1,445.90, 1993 MVA NEL $34,750; PEL $101,000; FEL $250,000; specials $27,814.93; future medicals $1,000; Total $414,564.93</td>
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<tr>
<td><strong>Konidaris v Lipari</strong> 6/6/96 S5648 Full Court – A(m) self employed bricklayer in MVA Dec 92 when about 40 (44 at trial). Temporary state of heightened pain and discomfort in back, strain to neck and general emotional shock with a resultant incapacity for no more than a few days, at most weeks. Incapacity for work for 3 months. <strong>Scale 2</strong></td>
<td>2</td>
<td>NEL $2,740; PEL $3,000; in lieu of interest $500; specials $378.10; Total $6,618.10</td>
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<tr>
<td><strong>Deverson v Fedele</strong> 28/4/94 D2980 Lunn J – P(m) mechanic injured MVA Dec 91 when 28 (30 at trial). Mild soft tissue injury to lower back and neck and pain in right shoulder. Since MVA disabled from heavy or sustained and repetitive bending. Future improvement expected. Neck and shoulder pain and restriction lasted only a few months. Mild psych problems. Manager/general duties in family (parents’) bicycle shop. Since had sympathetic employer could have continued working full-time soon after MVA. From early 1992 capable of doing full job earning $430 pw gross. This employment, due to liquidation, ended December 1993. Was a competent and versatile mechanic but his unrelated blindness in one eye and reactive anxiety state would have, on their own, made it difficult for him to find employment regardless of the MVA’s effects. <strong>Scale 2.5</strong></td>
<td>2.5</td>
<td>NEL $3,275; PEL $4,000; FEL $10,000; specials $3,120; Total $20,395 * not awarded as judgment for defendant</td>
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### Scale 3

<table>
<thead>
<tr>
<th>Case</th>
<th>Date</th>
<th>Judge</th>
<th>Description</th>
<th>Details</th>
<th>Damages</th>
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<tr>
<td>Oates v Jokic</td>
<td>12/1/94</td>
<td>Lewis J</td>
<td>P(m) heavy labourer injured MVA August 1990 when 26 (29 at trial). “Minimal musculo-ligamentous injury to cervical thoracic spine, shock and associated pain and suffering” per head note. Returned to heavy labouring work Dec 90.</td>
<td>NEL $3,450; FEL nil; PEL $6,797.44; specials $3,682.66; <strong>Total $13,930.10</strong></td>
<td>Spine (soft tissue multiple)</td>
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<tr>
<td>Vucetic v Wager</td>
<td>25/10/94</td>
<td>Pirone J</td>
<td>P(m) hair dresser (own business) in MVA August 1990 when about 54 (59 at trial). Concussion, contusions and abrasions suffered. Glass in eye. Treated successfully. Degenerated cervical and lumbar spines temporarily aggravated. Effects of MVA spent within 6 months. Ran hairdressing business at a loss, but compensated for loss of chance to secure work as an employee hairdresser for 6 months as found he had decided to end business.</td>
<td>NEL $3,720; PEL $5,000; FEL nil; specials $2,167; <strong>Total $10,887</strong></td>
<td>Spine, aggrav'n</td>
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<tr>
<td>Manatakis v Manatakis &amp; Transadelaide</td>
<td>5/7/96</td>
<td>Duggan J</td>
<td>A(f) injured in MVA in 1994 when 48. Suffered minor soft tissue injury and minor anxiety.</td>
<td>General damages $4,290; grat serv $400; <strong>Total $4,290.</strong></td>
<td>Soft tissue injury &amp; anxiety</td>
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<td>Read v McGeachie</td>
<td>2/6/99 [1999]</td>
<td>Burley J</td>
<td>P(f) unemployed injured MVA January 1994. Suffered a minor injury to neck at the C1-C3 level causing pain in the neck and head resolving within about 3 months. “She had to undergo physiotherapy and she experienced discomfort with reading and watching television. The pain and discomfort interfered with her sleep from time to time” @9. P would not have been employed regardless of the accident.</td>
<td>NEL $4,290; medicals $300; <strong>Total $4,590</strong></td>
<td>Whiplash</td>
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<td>Scale 4</td>
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| **Sarantidis v Nominal Defendant 29/11/99 [1999] SADC 160 Worthington CJ** – P(m) injured MVA Feb 1994 when approx 29 (34 at trial). “He suffered significant bruising, grazes to both elbows and in the area of his right hip, and general soreness … [which] would have settled gradually over the next few months” @ 17. Also suffered short-term emotional upset.  
NEL $5,720; specials $4,870 **Total $10,590** | **Bruising** |
| **Kiriakakis v Voelker 28/9/00 [2000] SADC 121** Vanstone J – P(m) **self-employed builder** injured MVA November 1994 when 36 (42 at trial). Suffered **soft tissue injuries to cervical and lumbar spines** in which there was pre-existing degeneration. No surgery or hospitalisation required and effects of MVA would have worn off by about end of 1995. P operated a loss-making business from 1994-1996. Allowance made though for fact he might find himself competing with persons not having a history of injury, which might cause periods of unemployment.  
NEL $5,720; PEL $5,000; FEL $12,000; int. $1,300; specials $4,622.40; **Total $28,642.40** | **Spine (soft tissue) multiple** |
| **Adamo v Nemet 15/1/01 [2001] SADC 1** Lunn J (appeal dismissed [2001] SASC 281 Full Court) – P(f) **shop assistant** injured MVA December 1998 when approx 30 (33 at trial). **Aggravated pre-existing symptomatic Scheuermann’s disease.** P went to work as a shop assistant the next day with pain in back and had difficulty turning her neck. Injuries though interfered with work for a time. MVA likely caused **soft tissue injuries to neck, shoulders and lower back.** Effects of MVA including restriction on mobility at work and social life probably only lasted 6 months.  
NEL $6,120; PEL $8,000; specials $4; int. $45; less credit for specials overpaid $2,913; less interim payments $13,000; **Total $1,744** | **Scheuermann's disease** |
**Scale 5**

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<tr>
<th>Case Title</th>
<th>Nature of Injury</th>
<th>Scale</th>
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<tr>
<td>Neumann v Leonardis 16/4/92 D2471 Thompson AJ – P(m) bespoke panelbeater injured in MVA August 1989 when 64 (67 at trial). <strong>Pain in neck, chest and hands.</strong> Off work for 3 weeks. Early 1990 presented as a patient with gradually resolving whiplash soft tissue injury to neck. September 1990 still had neck pain with restricted movement. July 1991 presented with hypertension, generalised neck tenderness and depressive illness. Not worked since December 1990. Also <strong>aggravated pre-existing arthritic condition of cervical spine</strong> in MVA. “Plaintiff had largely recovered by 1990 but about that time he had a real relapse, partly brought about by his age, concerns about his business and the accident. This became worse and produced conditions and complaints that were treated in late 1991. [MVA] was but one contributing factor” @ 10-11.</td>
<td>Whiplash</td>
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<tr>
<td>Christopoulos v Kooyman 22/12/93 D2982 Lowrie J – P(m) injured MVA working as owner/operator taxi-driver when 42 (46 at trial). Soft tissue injury to <strong>neck and lower back.</strong> For 12-18 months afterward unable to work long hours. Hours reduced from about 70 to 40-50. Thereafter not restricted by injuries. P also leased out 3 taxi-plates.</td>
<td>Soft tissue back &amp; neck</td>
<td></td>
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<tr>
<td>Deguisa v Hemmings 8/9/97 D3667 Lowrie J – P(m) apprentice panel beater injured MVA June 1994 when 21 (approx 24 at trial). Suffered <strong>ligamentous injury to lower back.</strong> Was unable to return to panel beating apprenticeship. Trial Judge had reservations about his resolve to find work but accepted heavy manual work was no longer suitable for him.</td>
<td>Soft tissue lumbar spine</td>
<td></td>
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<tr>
<td>Barns v Cirocco 15/1/98 D3745 Noblet J – P(m) <strong>business operator</strong> injured MVA Sept 1993 when 26 (30 at trial). Had pre-existing lower back problems including Scheuermann’s osteochondrosis. MVA found to have <strong>only aggravated his back problems for about 3 months.</strong> He worked in his own business as gutter and tank cleaner and also for a company mixing paint and painting tennis courts. He resigned the latter job 4 months after the MVA, but this found to be not because of the aggravation.</td>
<td>Spine aggrav’n</td>
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<tr>
<td>Taylor v Deane-Shaw 9/4/98 D3792 Anderson J – P(f) <strong>packer</strong> injured MVA March 1993 when 37. 42 at trial. Suffered whiplash injury and associated pain and discomfort for 3-4 months. P was working as a packer earning $476 net a week and was unable to do this for 3 months because of her injuries.</td>
<td>Whiplash</td>
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<tr>
<td>Walker v SGIC 17/3/99 [1999] SADC 21 Russell J – In June 1993 P(m) <strong>truck driver</strong> hit by a prime mover when 35 (approx 41 at trial). Struck in the lumbosacral region from behind probably <strong>straining the ligaments that are external to the facet joint of L5-S1. Spine was extended</strong> but no damage to any discs. He had fully recovered by 31 Dec 93.</td>
<td>Spine (lumbar)</td>
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<tr>
<td>Dimopoulos v Dimopoulos &amp; Delaïne 3/11/99 [1999] SADC 150 Allan J – P injured MVA July 1992 when approx 33 (40 at trial). Suffered a <strong>soft tissue injury to her neck and minor bruising to her left knee</strong> and was hampered in her work on her husband’s farm for less than a year. Profitability of business was not affected.</td>
<td>Soft tissue neck, knee bruising</td>
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<tr>
<td>Pilkington v Jamal 25/7/03 [2003] SADC 98 Lunn J – P(m) <strong>business operator</strong> injured MVA June 1995 when approx 43 (51 at trial). P’s <strong>degenerative lumbar spine was aggravated for about 5 years. P continued to work in his business</strong> employed through his family trust for most of this 5 year period but suffered a good deal of pain and inconvenience.</td>
<td>Spine aggrav’n lumbar</td>
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### VICTIMS OF CRIME ACT SCALE 0 – 50

_Criminal Injuries Compensation Act 1978 and Victims of Crime Act 2001 Scale_

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<tr>
<td><strong>Bober v State of SA 29/4/05 [2005] SADC 35</strong></td>
<td>Cut over right eye, abrasions</td>
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<tr>
<td>Burley J. P unemployed draftsman in August 2002, after previously having been assaulted at a bar [such assault not having been pleaded] was later on the same night &quot;hit about the head, thrown to the ground and kicked whilst he was on the ground&quot; @ para 79. P was also threatened with a knife and verbally, and offenders told him they knew where he lived. P received a cut over the right eye, which required suture, a cut or abrasion over his left eye, an abrasion to his scalp above the left temple beyond the hairline and bruising to his back. P’s pre-existing personality disorder aggravated.</td>
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<td>NFL $1,000</td>
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<th>CICA/VOCA Scale 1.5</th>
<th>CICA/VOCA Scale 1.5</th>
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<tr>
<td><strong>Picken v State of SA &amp; Pugliese 3/12/02 [2002] SADC 146</strong></td>
<td>Scarring, blemishes &amp; nervousness etc from dog bite</td>
</tr>
<tr>
<td>Smith J – P(f) bitten on left arm by D’s dog through car window at petrol station August 2001 when about 20 y.o. D not charged with any offence. Offence against <em>The Dog and Cat Management Act 1995</em> s43 established however. P frightened by incident, got steri-strips to bind the wound and received a tetanus injection. P missed one day’s work. The bitten area was sore and tender to touch for about one and a half months and she has a visible permanent scar and blemishes which she is conscious of and covers as much as possible with clothing. P suffered sleep disturbance for about 3 weeks and is now nervous around dogs.</td>
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<td>NFL $1,500; FL $114.76. Total $1,614.76</td>
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<tr>
<th>CICA/VOCA Scale 2</th>
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<tr>
<td><strong>GB v State of SA &amp; McCann 5/11/01 [2001] SADC 150</strong></td>
<td>Parent’s depression</td>
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<tr>
<td>Herriman J – Parent’s claim for symptoms of depression, sleep disturbance and intrusive thoughts as a result of his child, as a victim, voluntarily participating in oral sex offences with adult. Parent’s fears of son’s sexual inclinations principal cause of condition.</td>
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<td>Total Award $2,000</td>
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<tr>
<th>CICA/VOCA Scale 2.8</th>
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<tr>
<td><strong>TB v State of SA &amp; McCann 5/11/01 [2001] SADC 151</strong></td>
<td>Parent’s adjustment disorder</td>
</tr>
<tr>
<td>Herriman J – Parent’s claim for adjustment disorder and depressed and anxious mood as a result of discovering that her son, as a victim, voluntarily participated in oral sexual offences with adult. She was disgusted, could not sleep properly, had nightmares and her marital relationship was adversely affected. P is more protective now of son, constantly thinks about him and is nervous. P missed some work days. Relationship with son became distant, causing her to grieve.</td>
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The following is a full list of headings appearing in the full version only.

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| Abortion                                            | Assessment                                           |
| Failure to abort child in mitigation               | Assessment, not Calculation                         |
| Academics                                           | Assessment Philosophy                                |
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| Accommodation - See Housing                        | Compensatory principle                              |
| Actuarial calculations                              | Mathematical calculations                            |
| Actuarial Tables                                    | Mathematical error                                  |
| Addictions                                          | Relevance of other awards, local & interstate       |
| Alcoholism – assessment                             | Splitting the difference                            |
| Alcoholism (future economic loss)                  |                                                      |
| Alcoholism – not an egg shell skull factor         |                                                      |
| Contingencies                                       |                                                      |
| Discount in light of risk of relapse               |                                                      |
| Drugs                                               |                                                      |
| Prescribed drug dependence caused by accident      |                                                      |
| Use of alcohol – led to addiction                  |                                                      |
| Adoption                                            |                                                      |
| Failure to adopt out In mitigation                 |                                                      |
| Advocacy                                            |                                                      |
| Trial Techniques                                    |                                                      |
| Aged & Infirm Persons’ Property Act 1940           |                                                      |
| Protection order pursuant to s8a                    |                                                      |
| Aggravated damages - see Exemplary/Aggravated damages |                                                      |
| Agricultural enterprises                            |                                                      |
| Air passengers                                      |                                                      |
| Airconditioning                                     |                                                      |
| Alcoholic - see Addictions                          |                                                      |
| Allowances                                          |                                                      |
| Training                                            |                                                      |
| Alternative Career                                  |                                                      |
| Alzheimer’s Disease                                 |                                                      |
| Amputation                                           |                                                      |
| Annual Leave                                        |                                                      |
| Antedating judgment                                 |                                                      |
| Appeal                                              |                                                      |
| Approach on Appeal                                  |                                                      |
| Global Sum & Wrongs Act Approach                    |                                                      |
| Jury v Judge alone verdicts                        |                                                      |
| New trial (Power to order on limited question)     |                                                      |
| Re-assessment of damages                            |                                                      |
| Total award (very high)                             |                                                      |
| Trivial variations to assessment                    |                                                      |
| Armed forces - see Military operations             |                                                      |
| Artists/Performers                                  |                                                      |
| List of further cases involving such people         |                                                      |
| Baby                                               |                                                      |
| Brain Injury                                        |                                                      |
| Loss of                                             |                                                      |
| Having baby/opting out of workforce                |                                                      |
| because of MVA                                      |                                                      |
| Quadroparesis                                       |                                                      |
| Unborn                                              |                                                      |
| Beck v Farrelly - see Volunt/Grat Serv              |                                                      |
| Benefit to others from services to P               |                                                      |
| Bereavement - see Nervous Shock                     |                                                      |
| Grief                                               |                                                      |
| Blindness - see Vision                              |                                                      |
| Boarding & Lodging - see Vol.Grat.Serv              |                                                      |
| Body Function (loss of) of Overall Bodily Function |                                                      |
| Brain                                               |                                                      |
| Most Serious Injuries (assessment re NEL)           |                                                      |
| Neuropsychological testing                          |                                                      |
| Brave/Courageous plaintiff                          |                                                      |
| Breach of contract                                  |                                                      |
| Damages for physical and mental injury             |                                                      |
| Breasts                                             |                                                      |
| Implants                                            |                                                      |
| Reduction surgery                                   |                                                      |
| Buffer/Cushion - see FEL Buffer/Cushion             |                                                      |
| Business/Family Business                            |                                                      |
| Assessing EL when voluntary arrangement distributes income regardless of actual work contributions |                                                      |
| Assessing loss of earning capacity damages          |                                                      |
| Goodwill (loss of)                                  |                                                      |
| Income sharing arrangements                        |                                                      |
| Injured in early stages of business                |                                                      |
| Injured, but doesn’t lose much income as business can continue |                                                      |
| Loss of chance to start up a business               |                                                      |
| Loss of deceased spouse/partner’s services          |                                                      |
Mitigation of Loss
Past Economic Loss
Replacement Labour
Spouse with earning potential injured while working in unprofitable business
Unprofitable business

Cancer
Pancreatic

Car Cleaning Expenses

Caravan
Needed to move from caravan to house

Care and Guidance
Loss of

Carers
Carers allowance/benefit
Economic use of
Live-in
Passive care
Psychiatric injury
Supervision of

Case Manager

Causation
Disentanglement of ‘wrongful’ and innocent causes
General principles
Independent causes leading to reduced earning capacity
Material contribution
Novus Actus
Superseding events
Supervening events

Cerebral palsy
NEL/General damages

Chance - see Loss of chance

Charitable benefits - see Gratuitous payments

Child Care - see Children-child care

Child Support - see Children-child care

Children
Ability to cope with disability
Capacity to care for self
Child care
Cost of bringing up
Earning capacity (socio-economic background)
FEL (assessing)
Prospective
Unborn
Unwanted children
Young children suffering minor injuries
Young children/infants suffering total loss of earning capacity

Choice of Law - see Conflict of Laws

Civil Liability Legislation
Civil Liability Act (SA) 2002
s32 - Precautions against risk
s34 - General principles
s36 - Meaning of ‘obvious risk’
s37 - Injured person presumed to be aware of obvious risk
s38 - No duty to warn of obvious risk
s39 - No liability for materialisation of inherent risk
s40-41 - Standard of care of professionals
s52(1)(b)

Cleaning

Collateral benefits

Colostomy apparatus
Comparable verdicts
Providing range to court

Compensatory principle - see Assessment-Compensatory principle

Computer/Technology system
Baby

Conditional payments

Conflict of laws

Consortium (loss of)
General principles (summary of)
Elderly

Constitutional Law

Contingencies
Absentmindedness
Addictions (risk of relapse into)
Against defendant (operating)
Chance of obtaining more remunerative employment
Children (having)
Dangerous activities of plaintiff
Discounting actuarial calculation
Expenses of earning a living
Favourable
General
Motorcycling
New relationship
Pre-existing conditions - see Pre-existing conditions
Premature death
Recurrent depressive illness from unconnected accident
Scope of discount for
Short period of FEL
Sickness
Sympathetic Employer

Contribution

Cosmetic surgery

Costs
Claim fails in part (where)
Indemnity basis
Institution of Proceedings in Wrong Jurisdiction and 90 Day Rule
Third parties

Counselling

Criminal Injuries Comp - see Victims of Crime Act

Criminal Record

Cross vesting - see Transfer of Proceedings

Cultural Fulfilment

Loss of

Currency of judgment

Dangerous recreational activity

Death - see also Wrongful Death

Articles
Claimant of (from non-compensable causes)
Contingency of premature death
Loss of child care services
Loved Ones in Accident
Overtime
Proportion of deceased’s income available to family

Declaratory judgment
S30b Supreme Court Act
Criteria for granting
Final assessment not made
Interim award NEL
Onus
When not made
Degenerative conditions
Delay
In bringing Proceedings
Onus of providing unreasonable delay
Dependency — see Financial Support - loss of
Dependants
Definition of
Method of assessment
Depreciation
Depression
Diabetes
Dignitary interest
Violation of
Disappointment
Damages for
Discount rate
Degenerative spine
Disfigurement
Prospects of Marriage
Sexual attractiveness
Subjective factors
Divorce/Separation — see Marriage break-up
Dog attack
Bite
Domestic Assistance
Past
Double Benefit - see Windfall
Concerns
Double Comp’n - see Windfall
Concerns
Driver’s Licence
Loss of
Drug Addict - see Addictions
DSM-IV Criteria
Dust Diseases
General assessments
Earning Capacity
Children
Discretionary Award in General Damages
Award
Distinction between ‘loss of earnings’ and
‘loss of earning capacity’
Education
Employment prospects
Fringe benefits
General principles
Greater earning potential because of career change
Loss of (principles for assessing)
From independent causes
Principles for assessing
Proof of
No will to work
Partial loss of
Percentage Loss
Person not likely to have exploited it fully
Plans to exercise it more fully
Restoration of by damages award
Set off
Tips
Undisclosed income [see Income – undisclosed]
Unexploited or under-exploited capacity
Vulnerability to dismissal
Economic loss - see
Earning Capacity
Future economic loss/loss of earning capacity
Past economic loss
Education
Additional costs of
Relevance to income
Egg-shell Skull
Elderly
Assessment considerations
Psychiatrica disorder
Employment
Fulfilment (loss of)
Employment History
Past economic loss (assessing)
Poor employment record
Youth
Employment Prospects
Entertainers - see Artists/Performers
Environmental Control Unit
Epilepsy
Equipment Claim
Automatic gates
Bedding
Boots (special)
Cerebral palsy (person with)
Chair (swivel)
Commode
Communicator (Galah audible)
Computer
Eating equipment
Electric bed
Electrical toothbrush
Environmental control unit
Frame (walking & standing)
George Foreman grill
Hoists
Incontinence aids
Jay cushion
Mobile phone — see Mobile telephone
Parallel bars
Paraplegic
Postural inserts
Quad walking stick
Ramps
Severely injured infant
Shower chair
Socks (special silicon for pressure sores)
Spinal cord stimulator
Toileting
Wheelchair — see Wheelchair
Evidence
Burden of proof
Death of expert witness
Disentanglement
Earnings
Exaggeration/Deception
Failure to lead
Future loss (establishing)
Lay v Medical
Medical
Not to be deprived of damages because
evidence makes calculation difficult
Over-elaborate evidence sometimes
unhelpful
Presumptions
Video footage

Exemplary/Aggravated Damages
Articles
Assault by employees
Assault by Police
Distinguishing aggravated & exemplary damages
Distinguishing aggravated damages from ordinary NEL
Equitable claim
Provocation

Expenses - see Medical & Hospital expenses

Experts
Opinions

Extension of time

Eyes
Loss of vision in one eye

Face - see Cosmetic surgery

Facebook
False Imprisonment

Family Home
No reduction in damages for gaining interest in

Family Law Issues
Maintenance

Family Trust
Calculating LOEC

Farming - see Agricultural Enterprises

Final Assess’t - see Declaratory Judgment

Financial Management
Poor

Financial skills
De facto’s claim re deceased partner
Loss of spouse/partner’s

Financial Support
Loss of

Firewood

Foreign Currency - see Currency of Judgment

Fostered Children
Removed from family

F. & W. Wood damages

Fraud/Deception
Fringe Benefits
Loss of

Fulfilment Emp’t - see Emp’t

Fulfilment

Fund Management - see Managing Fund

Funeral Expenses
Average Australian funeral
Unreasonable

Future Care
Cerebral Palsy
Full-time care (mode of providing)
Full-time care (whether required)
General principles
Home v Hospital Care (home visitations)
Home v Hospital Care P violent towards mother
Independent/semi-independent living
Paid v Unpaid
Partner’s contribution (relevance to assessment)

Reasonableness
Severely injured infant
Uncertainties concerning extent of need for vacation care

Future Economic Loss/Loss Earning Capacity
Addictions - Alcoholism (FEL)
Assessment of (general principles)
Baby
Back & neck pain (future loss caused by)
Buffer/Cushion
Children
Components of sum awarded not adequately articulated
Co-workers’ earnings/career path subsequent to P’s injuries
Difficulty in assessing (when)
Earnings still compensated for LOEC
Employment (chance of obtaining more remunerative)
Employment history
Income Protection policy
Life Expectancy
Loss of earning capacity,
Lost years
Onus
Post-accident earnings
Pre-accident earnings
Realities of the Market Place
Residual earning capacity
Rise in wages
Social Security – History of receiving
Social Security history

Gardening
Gender Reassignment

Gratuitous Serv - see Voluntary/Grat Serv

Gratuitous Payments

Grief - see Nervous Shock

Gym

Gynaecological
Non-SA cases

Handyman Services

Hearing

Heart transplant patients

HECS Fees

HIV

Hobby Farm - see Agricultural Enterprises

Hoists

Holidays
Additional cost
As part of recovery process
Future care whilst on
Limited Awareness

Home Alterations - see Housing & Wheelchair

Home Care

Home Environment System

Home Maker
Loss of capacity as
Unexercised capacity

Home Pool - see Pool

Home Renovations
Doing renovations whilst off work
Loss of opportunity to do
Hospital expenses - see Medical & Hosp Exp
House Husband - see Homemaker
‘Household
Housekeeping Services
   Past
Housing
   Additional costs
   Baby (future assessment re)
   Barn
   Capital Costs
   Capital value increase due to alterations
   Future home modifications
   Improvements
   Modifications to P’s parents’ home
   Painting
   Paraplegic’s requirements
   Purpose built v modification of existing housing
   Sale of house
   Severely injured infant
Housewife/husband - see Homemaker
Huntington’s Disease
Husband
   Loss of support of
Hydrotherapy
Hypothetical Events
Hysterectomy - see Gynaecological
Imprisonment
In vitro fertilisation - see Medical & Hosp Exp (f) - In vitro fertilisation
Incapacity
   Onus
Income
   Tax fraud
   Taxation of personal damages
   Undisclosed
Income Protection Policy - see Collateral benefits
Infertility
Inflation
Inheritance
   Accelerated
   Loss of prospective inheritance
Injury-created need
Inquiry
   Order for
Insurance
   - see also Collateral benefits
   Loss of availability of
   Premiums (deduction of)
Interest
   Date of calculation
   Delay in bringing proceedings
   Discretion to award lump sum
   Economic loss
   Future detriment
   Naval cases
   Past care
   Past Economic loss (PEL)
   Past housekeeping services
   Rates – past v present day
   Receipt of Workers Compensation
   Special damages
   Taxation
   Voluntary/Gratuitous services
Interim Assessment/Award
Interstate Accidents
Intestacy - see Inheritance
Investment skills
   Loss of spouse/partner’ skills
Joinder
Jurisdiction
Jury verdicts / Issues
Kidney
Labour Market - see FEL - Realities
Landscaping
Lawyers
Life Expectancy
   Articles (general)
   Articles (cerebral palsy)
   Assessment of (prospective life tables)
   Brain injury (major)
   Effect of shortened life expectancy on assessment of damages for pain and suffering
   Heart transplant patients
   Loss of
   Pancreatic cancer
   Paucity of evidence
   Spinal cord injuries
Lift
Litigation guardian
Liver Transplant
Loan
Long Service Leave
Lord Campbell’s Act Action
Loss of Chance
   Articles
   Business/Employment opportunities
   Health outcomes
   Legal outcomes
   Promotion
   Skill development (of)
Loss of Earning Capacity - see FEL/LOEC
Loss of Financial Support - see Financial Support
Loss of Enjoyment
Lost years
Maintenance
   Deduction for
   Property maintenance
Malicious Prosecution
Management Expense Ratio Fees (MERS)
Managing Fund
   Calculating the present value of the cost of fund management
   General principles
   Baby
   Taxation issues
Marriage
   Loss of benefits accruing from
Marriage breakdown/break-up
   Accommodation
   Depression (accident-caused)
   Nervous shock (consequence of)
Prospects of (assessing)
Sexual problems
Material fact of decisive character
Mathematical error
Medical Action - see Mitigation
Medical Advice
Medical & Hospital expenses (future)
Abdominoplasty
Blood tests
Bony limb surgery
Diversional therapy
Drugs (not fully tested)
Drugs/Medication (expensive option)
GP Consultations
Home visits by GP
Hospitalisation
In vitro fertilisation
Liability for (must be liable to pay them to recover)
Music therapy
Neurologist
Occupational therapy
Ophthalmologist view
Overseas treatment
Paraplegic
Pharmaceutical expenses
Drugs on PBS attracting rebate
Physiotherapy
Podiatry
Psychology
Reasonableness
Rehabilitation physician
Speech pathology/therapy
Theatre & facility fees
Travelling for treatment
Medical Evidence - see Evidence
Medical Examination
Medical Expenses
Prescribed minimum
Medical Negligence
Articles
Birth
Contraceptives
Cosmetic surgery – see Cosmetic surgery
Cure (loss of chance for)
Diagnosis (failures re)
Drugs (negligent administration of)
Endoscopy
Failure to warn
Injections
Leg lengthening procedure
Loss of chance
Operations (negligent)
Pleadings - amendment of
Pregnancy
Recording history
Reports
Treatment exacerbating injury
Warfarin care
Wrongs Act and Medical Negligence
Damages Cases
Medical Reports
Medical Treatment
Contributing to dependency
Contributing to injury
Delay in seeking
Likelihood of obtaining
Postponed (relevance of inflation)

Medicare Rebate
Meningitis
General medical information
Mercury
Mesothelioma see Dust Diseases
Military Operations
Injuries/Aggravations during
Mitigation
Abortion
Adoption
Appliances
Assumed plaintiff will adopt course that minimises his/her loss in monetary terms
Business Losses
Failure to Mitigate
Infants
Medical (general)
Medical (reasonableness)
Objection to spend money in mitigation
Onus
Pleadings
Reasonable costs of (recovering)
Rehabilitation
Retraining
Study (undertaking)
Surgical Procedures
Mobile Telephone
Hands free
Modelling
'Moderate’ injuries
Most Extreme Case
Motor vehicle - see Transportation
Music (see also Hearing)
Nanny Care
Naval Cases
Negligence - See Solicitor’s Negligence
Nervous Shock
Aggravation
Defined
Grief and bereavement
Neurophysiotherapy
Next friend - see Litigation guardian
Non-Economic Loss (NEL)
Alcoholic
Appeal (approach on)
Assessment approach
Holidays
Plaintiff’s awareness of plight
Reduction for limited opportunity for pleasure
Subjective factors
Young person
Novus Actus - see Causation - Novus Actus
NSW Assessment Cases
Nuisance
Nurse
List of further assessment cases involving nurses
Once and For All Rule
Onus of Proof
Earning capacity
Pre-existing conditions
Operation - see also Operation in
Injuries
Orthopaedic bed

Orthotics

Overall Bodily Function

Overall Working Capacity

Overtime (loss of)

Stopped doing it after wife died

Pain & Suffering

Paraplegic

Future domestic assistance

Parents (both die)

Damages where both parents die

Part-time work

Students

Particulars

Partnerships

Loss of Earnings

Replacement labour

Past Care

Severely injured infant

Past Economic Loss

Assessment period

Interest - see Interest – Past Eco Loss (PEL)

Partnership (calculating PEL when injured P

in partnership with wife)

Principles for assessing

Vicissitudes

Payments

to victim before judg’t (treatment of)

Pensioner

Pensions/Benefits

Armed Services

Future earnings

Injury to person on pension

Interim invalidity pension

Non-deduction of

Per quod servitium amisit

‘Person Interested’

Personal Grooming

‘Personal Injury’

Personal Trainer

Personality Change

Pleadings

Amendment of

Mitigation

Pleural Plaques - see Dust Diseases

Pool

(see also Housing (future home modifications)

Post-accident earnings

Post accident/pre-assessment

subsequent injuries and successive

injuries

Post Traumatic Stress Disorder

Predisposition

‘Decompensation’

Pre-existing Conditions

Contingencies

Parkinson’s disease

Pre-judgment payments

to victim (treatment of)

Pregnancy

Potential problems if gets pregnant

Termination

To full void caused by loss of child

Wrongful life

Premature death - see Contingencies

Prescription drugs

Prisoner

Promotion

Loss of chance

Property damage & Personal Injury - see

Motor Vehicles Act s125

Prosthetics

Psychiatric injuries

Aggravation

Coping with (factors relevant to ability to cope)

Elderly

Personality change

Significant achievement despite injuries

Susceptibility to

Psychologists

Evidence of

Public Policy

Public Speaking

Public v Private Benevolence

Reading

see also Vision

Reasons

Economic loss

Medical evidence (re)

Rebates - see Taxation-rebates

Recent SA Decisions

Recreational Services

Redundancy Payments

Rehearing

Relocation Expenses

Re-marriage

Contingency of widow remarrying

Disfigurement

Remote area

Chance of obtaining employment in

Remoteness of Damage

Removal of proceedings to another

court

Remunerative work at home whilst

injured

Renovations - see Replacement

services

Re-opening case

Post trial but pre-judgment new helpful

medical development

Replacement Labour

Replacement Services (Home duties)

Residual earning capacity

Onus

Respite Care

Retirees

Early retirement

Evidence of retirement plans

Retraining/Study

Scale [0-60]

Separate Hearings

Liability and Quantum

Services to Others (Loss of)
Set off - see Earning capacity (set off)
Settlement
  Approval of
Sex Worker
Sexual Assault / Misconduct
Sexual misconduct exception NSW
Sexual organs
Sexual partner
  Duties owed to/by
Sick Leave
Smell
Smoking
Social & Economic Position
Social Security
  History of recurring
  Preclusion periods
  Wrongly Receiving Benefit
Social/Sporting Life
  Serious Disruption
Solicitor’s negligence
Special Benefits
Special Damages
  Definitional (future)
  Distinction between special and general damages
  Interest on
  Pleading of
Special Equipment - see Equipment Claim
Sportspersons
  Elderly
  Football
  General
  Reasonableness of Continuing Sporting Activities
Stoma
Students/Studies
  Foreign students
  Lost time
Stunt Performers
Subpoena
Successive Accidents
  Successive independent tortfeasor
Sullivan v Gordon Damages
Superannuation
  Baby
  Deduction of premiums
  Disregard in assessment of damages
  Employer’s contribution (loss of)
  Future Loss of Benefits
  Loss of superannuation contributions
  Self-employed (future loss)
Superseding/Supervening Events
Surveillance film
Survival of Causes of Action Act 1940 SA
Swimming Pool - see Pool
Sympathetic Employer - see Contingencies sympathetic employer
Taxation
  Family Trust
Fraud
  Future changes to tax law
  Hypothetical lost income - tax on (onus issue)
Income tax - impact on award of damages
Non-disclosure of income
Rebates
Voluntary/Gratuitous Services Provided by Defendant
Telephone Calls
Therapeutic Aids - see Equipment Claim
Therapy
Time Limitations
  Material fact of a decisive character
Tips
Tracheotomy
Transfer of Proceedings
Transportation
  Baby (assessment re future needs)
  Driver
  Future costs
  Injury-created need
  Modified vehicle
  New vehicle
  Parking
  Saved Expenses
  Taxi
  Treatment
  Van with hoist
Travel
  Airfares
Unconscious Plaintiff
Undiagnosed condition discovered
Unemployed Person (injury to)
Unskilled workers
Unwanted Children - see Children Unwanted
Vacations - see Holidays
Vasectomy
Vicarious liability
  Exemplary damages
Vicissitudes - see Contingencies
Victims of Crime Act 2001
  Aggravated damages
  Annotations to Victims of Crime Act
Assault
  Assessment Principles
Causation
  Children (financial loss)
  Conduct contributing - s7(9)
  Conduct contributing (sexual assault)
  Consent orders - s7(7a)
Corroboration
  Engaged in conduct constituting an indictable offence (victim was)
Extension of time - s7(4)
Financial loss
  Hindering investigation - s7(9a)
House (sale of)
Housing (sale of house)
Hospital visitation
Injury (in consequence of commission of offence)
Injury (‘in respect of an injury arising from the offence’)
  Jury verdicts
  Not charged with offence – s8(1b)
Parent’s fears of son’s sexual inclinations
Payments made by others (s20)
Psych consequences from reporting or discovery of offending
Scale (principles to apply re 0-50 scale)
Sexual (parent’s fears of son’s sexual inclinations)
Victim (definition of)

Vindication
Violent plaintiff
Vision
Employment prospects of visually impaired
Loss of ability to read

Voluntary/Gratuitous Services
Articles
Boarding & Lodging
Both parents died pre Wrongs Act s35a
Broader than nursing and home help
Children recovering for loss of services of deceased or injured parent
Children – services provided to injured person’s children
Commercial enterprise (gratuitous assistance provided to)
Church remuneration
Determining whether a person will continue providing voluntary services
Domestic assistance [see also domestic assistance]
Expenses incurred by market provider
Gifts
Girlfriend’s services
Gratuitous payments
Interest on damages for
Labour provided free to P’s business
Liability to pay based on need
Market rate
Necessary (whether)
Paraplegic
Passive care
Past voluntary/gratuitous services
Pre-existing conditions
Provided by defendant
Public v private benevolence
Spouse & family members (provided by)
Takeaway meals (obtaining)
Threshold
Tortfeasor (provided by)
Trust
Valuation of Services
Who is compensated?

Vulnerability on Labour Market - see
Earning capacity (vulnerability)

Wages
Paid by employer during worker’s absence
Paid by loan
Paid to worker during incapacity (nature of)

Wealth of Plaintiff
Weight Gain

Wheelchair
All terrain
Beach
Caravelle van for
Gloves
Hand cycle
Increase in need for in the Future
Manual
Sports
Use and maintenace of

Whole person impairment
Wilson v McLeay damages
Loss of Consortium

Windfall Concerns
Distinguishing aggravated damages from
NEL
Double compensation
GST
Home pool
Superannuation
Voluntary/Gratuitous services provided by tortfeasor

Workers Compensation
Supervening events
Tax on (recovery of)
Workers Compensation Payments
WRCA S.43
WRCA S.54(1) & (2)
WRCA S.54(5) & (7)

Wrongful Conception and Birth - see
Children (unwanted)

Wrongful Death
Articles
Benefit to surviving spouse
Loss of financial support
Pecuniary Benefits (loss of expected)

Wrongs Act (pre Civil Liability Act)
S.29
S.20
S.29(2a)
S.20(2aa)
S.20(3)
S.22
S.24H(a)
S.34

Wrongs Act (Historical)
S.35A
S.35A(1)(b) – use of scale
S.35A(1)(i) – seat belts
S.35A(2) and its relationship to s.35A(1)(h)

Young Workers
Relatively young manual workers not being able to return to manual labour

Youth
Employment history
Whether an assessment factor
DISFIGUREMENT

Sample only.

Prospects of Marriage

“But a matter which is not canvassed in his Honour's reasons, but which is one that, in my view, creates one of the most serious consequences for the appellant is the effect that the scarring and disfigurement of her body will have on her sexual attractiveness and her prospects of marriage. Although the scarring and disfigurement will not, in the nature of things, deprive her of her chance of marriage, I would think the time will come when, if she should form an attachment to a young man, or if indeed she should receive a proposal of marriage, she will feel bound, under a sense of moral duty, to reveal the imperfections of her body and the unsightly scarring which disfigures it. In the event of her marriage, the problems likely to be associated with the happiness and comforts of a fulfilling married life cannot be discounted, even though she may have a patient and understanding husband. It is true that the scarring and disfigurement can now be concealed by a suitable mode of dress, but the appellant has not yet had to come face to face with the experience of womanhood and all the vagaries of fashion. When she does so, she may find that the realities of life will not be as kind to her as they have been up until now.” *Young v Woodlands Glenelg Church of England Girls Grammar School Inc* (1979) 85 LSJS 15 @ 20 Walters J (Full Court)

Sexual attractiveness

[See Disfigurement – Prospects of Marriage]

Subjective factors

“The other matter concerns his facial deformity. [Counsel] complains that he did not say in evidence that he was embarrassed by the change to his face. On the other hand, he nowhere said that he was not embarrassed by it. In my view, whenever there is some physical loss, be it of function or appearance, some damages are presumed as a result, and if there is no evidence one way or the other as to the effect of the injury or loss in question on the plaintiff's happiness, the court will presume that he would suffer what an ordinary man in such circumstances would suffer - neither more nor less. It is for the plaintiff to show that the loss had on him more effect than it would have had on an ordinary man who had suffered the same loss and, in my view, on the defendant to show that it had less effect than it would have had in the case of an ordinary man suffering the same loss.” *Turley v Saffin* (1975) 10 SASR 463 @ 473-474 Bray CJ (Full Court)
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DAMAGES FOR DEFAMATION IN SOUTH AUSTRALIA

This new section will keep you informed of recent assessments of damages in S.A. defamation cases. Useful statements of principle will also be catalogued. Both quantum and apportionment of damages defamation case law will be canvassed.

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**APPORTIONMENT**

**General Principles**

"[Fitzgerald] 97 The principles applicable to apportioning the award of general damages, excluding the aggravated damages awarded against the second defendant alone, as between the first defendant and the second defendant are conveniently set out in *Rowan v Cornwall & Ors (No. 7) [2003] SASC 49* (paragraph 16):

‘16. Section 26 of the Wrongs Act provides that the determination of contribution recoverable from any person shall be the amount the Court finds to be just and equitable, having regard to that person’s responsibility for the damage. When considering what is just and equitable for the purpose of apportioning damages where the plaintiff’s reputation has suffered in consequence of the publication of several defamatory statements, it will be necessary to examine the extent to which the acts of each defendant has caused the damage suffered by the plaintiff. The State defendants relied on the remarks of the High Court in *Podrebersek v Australian Iron and Steel Pty Ltd* (1985) 59 ALR 529 at 532-533 and in *Wynbergen v Hoyts Corporation Pty Ltd* (1997) 149 ALR 25 per Hayne J at 29 with whom the other members of the court agreed. Both those cases concerned apportionment for contributory negligence but the approach I have identified is consistent with the principle expressed in those decisions that, when determining a proper apportionment of responsibility, regard must be had to the relative importance of the acts or the parties in causing the damage.’

98 Section 26 of the Wrongs Act has been repealed and replaced by the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001*; and s 6(5) of that Act is in substantially the same terms.* Fitzgerald v Southern State Broadcasters Pty Ltd & Anor 28/7/05 [2005] SADC 93 Cole J"
Affairs

$5,000 each was awarded to the P's who were falsely alleged to be having an adulterous affair with each other. The D communicated this to Mr Croft. The Ps were work colleagues at CMA in the towns of Moree and Inverell. The rumour became quite widespread, but Mr Croft seemed to disregard what he had been told and only passed it on to the P’s. Specific hurt flowed to the Ps upon discovering the publication to Mr Croft. Matter involved the NSW Defamation Act 1974. *Cush v Dillon; Boland v Dillon* 25/2/09 [2009] NSWDC 21 Elkaim SC DCJ

Aggravated Damages

Aggravating factors (anonymity)

In *Amanatidis & Anor v Darmos* 29/4/11 [2011] VSC 163 Sifris J awarded $5,000 and $10,000 respectively to a husband and wife who were alleged, in letters sent to two people (one being a priest), to have done various inappropriate things in relation to handling the estate of their deceased relative. The award was made in the context of an acrimonious family dispute. The anonymous nature of the letters was an aggravating factor.

Aggravating factors (apology insufficient)

*RJ v JC* 21/10/08 [2008] NSWDC 217 Gibson DCJ awarded $30,000 in the case of limited verbal accusations of paedophilia in the context of a family feud and access issues. No aggravated damages awarded despite apology being too little and too late and P’s knowledge of the falsity of the accusation.

*Moumoutzakis v Carpino* 15/8/08 [2008] NSWDC 168 defamatory remarks by D suggesting P was a gangster and law breaker were published to about a dozen people in the same block of shops D & P enjoyed as holders of strata title. The remarks were sent as letters and posted in a public area associated with the shops. P made to feel like a criminal and suffering abuse to that effect even from passing drivers. Similar assessments where limited publication compared. *Section 35(2) given detailed consideration*. The statutory cap can only be exceeded if aggravated damages are awarded. Aggravated damages awarded here as clear evidence of *malice, late abandonment of hopeless defence of partial justification, and an ‘apology’ that was far from an apology* and only caused P added distress. $50,000 damages, including aggravated damages, awarded by Gibson DCJ.

*PK v BV (No 2)* 9/12/08 [2008] NSWDC 297 Gibson DCJ awarded $50,000 each (including aggravated damages) to a husband and wife who were defamed in private conversations as liars and thieves. The publication was very limited and
the ‘grapevine effect’ was not pleaded. Despite not being pleaded ‘it is part of the natural pain of mind which accompanies such publications that a [P] will fear repetition’. The impact upon the Ps’ family, particularly their children, was very strong. The D’s defence of truth was inflammatory and D’s ‘apology’ was too little and too late and unconvincing.

**Aggravating factors (apology – lack of)**

See Apology – Lack of (aggravating factor) below

**Aggravating factors (baseless allegations)**

In Manefield v Child Care NSW 15/12/10 [2010] NSWSC 1420 the D sent out a letter to its 650 members imputing various negative things about P. Kirby J found that “Mr Manefield, at the time of publication, was a [45 y.o.] man of maturity and achievement. He had been a consultant for much of his life and also a manager. He had been on the KU Children’s Services Board and had been its President for five or six years. Here, each imputation was serious. Imputations (a) to (e) attacked Mr Manefield’s honesty and integrity. Imputation (f) imputed incompetence to him. Collectively, they were a well aimed knock-out blow in respect of his ambitions to have his own operation (with other members of his Board) in the area of his passion, child care. Although no claim is made for special damages, it is unsurprising that, following the publication, he abandoned the Early Learning Australia project and left the industry. I accept that Mr Manefield’s reputation in the child care industry suffered greatly. I also accept that he was very hurt by the attack that had been made upon him, and the more so because it was misconceived and utterly baseless. I believe the appropriate award is $150,000 including aggravated damages” @206-208.

**Aggravating factors (calling for prosecution of P)**

*Fitzgerald v Southern State Broadcasters Pty Ltd & Anor 28/7/05 [2005] SADC 93.*

Cole J found that the D’s calling for the prosecution of the P (requesting such by letter to the police and the Premier) constituted aggravation of a serious nature.

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